

Message Text

CONFIDENTIAL

PAGE 01 USBERL 01156 01 OF 05 180517Z
ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10
L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 ICA-11
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AMEMBASSY BONN
INFO AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION USNATO

C O N F I D E N T I A L SECTION 1 OF 5 USBERLIN 1156

E O 11652: GDS
TAGS: PGOV BQG AKB
SUBJ: SUPPRESSION OF ANTI-SOVIET POSTERS IN THE WESTERN SECTORS
OF BERLIN

REFS: (A) USBER 1044; (B) STATE 97963; (C) BONN 6918;
(D) 77 USBER 2998

SUMMARY: THE SOVIETS ARE LIKELY TO REPEAT THEIR REQUEST THAT THE
ALLIES ENSURE THAT ACTION IS TAKEN AGAINST THE WESTERN SECTORS
OF BERLIN. ADDRESSEES
WILL RECALL REPORT (REFTEL D) OF ACTION TAKEN UNDER ALLIED
LAW (SECTOR ORDINANCE 501) BY BERLIN AUTHORITIES AGAINST ANTI-
BREZHNEV POSTERS IN NOVEMBER, 1977. HOWEVER, ALLIED LEGAL
ADVISERS HAD RESERVATIONS ABOUT USE OF SECTOR ORDINANCE 501;
FURTHERMORE AFTERMATH OF NOVEMBER ACTION INVOLVED A NUMBER OF
DIFFICULTIES WHICH IS OUR VIEW ARGUE AGAINST ANY ALLIED INVOLVE-
MENT IN SIMILAR FUTURE ACTIONS. IN BRIEF: (A) USBER
BELIEVES THAT ALLIES SHOULD TELL SOVIETS IN BERLIN THAT ALLIED LAW
CONFIDENTIAL

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PAGE 02 USBERL 01156 01 OF 05 180517Z

IN FORCE IN BERLIN DOES NOT MANDATE ACTION AGAINST GENERAL
ANTI-SOVIET POSTERS, PAMPHLETS, ETC; (B) IF ASKED BY
THE BERLIN STAATSANWALTSCHAFT OF SENAT, WE SHOULD NOT
REPEAT NOT AUTHORIZE USE OF SECTOR ORDINANCE 501 WITH
RESPECT TO SUCH POSTERS; (C) WE BELIEVE THAT ANY ACTION
TAKEN ON SUCH POSTERS, ET AL. SHOULD BE TAKEN ON THE BASIS
OF GERMAN LAW IN FORCE IN BERLIN (AND RECENT FRG AND

BERLIN ACTIONS PORTRAY A CONFUSING PICTURE OF WHAT THAT LAW IS). END SUMMARY.

1. THE SOVIETS HAVE MADE CLEAR THAT THEY WOULD LIKE ACTION TO BE TAKEN WITH RESPECT TO THE VARIOUS ANTI-SOVIET POSTERS CIRCULATING IN BERLIN. THESE POSTERS EXPRESS CRITICISM OF THE SOVIET UNION IN A NUMBER OF WAY, INCLUDING CARICATURES OF BREZHNEV AND CRITICISM OF PAST AND PRESENT SOVIET POLICIES. TEXTS AND CARICATURES ARE SATIRICAL OR IN BAD TASTE, DEPENDING ON ONE'S POINT OF VIEW. ONE POSTER, AT LEAST, EVEN CONTAINS A CARICATURE OF PRESIDENT CARTER. HOWEVER, NONE OF THESE POSTERS CRITICIZE THE SOVIET UNION OR ANY OF THE OTHER OCCUPYING AUTHORITIES IN GREATER BERLIN IN ITS CAPACITY AS AN OCCUPYING POWER OF GREATER BERLIN. THE BERLIN LEGAL ADVISERS ARE OF THE OPINION THAT SECTOR ORDINANCES 501 (REFTEL D PARA 5) IS PROPERLY APPLICABLE ONLY IN CASES IN WHICH ONE OR MORE OF THE OCCUPYING AUTHORITIES IS ATTACKED IN ITS CAPACITY AS OCCUPYING AUTHORITY. IN ADDITION, PROBLEMS ENCOUNTERED IN CONNECTION WITH THE SUPPRESSION OF ANTI-BREZHNEV POSTERS IN NOVEMBER 1977 INDICATE THAT THERE ARE ALSO VERY GOOD PRACTICAL REASONS WHY WE SHOULD NOT INVOLVE OURSELVES AT ALL IN THE SUPPRESSION OF SUCH POSTERS.

2. SUBSEQUENT TO THE CONFISCATION OF THE ANTI-BREZHNEV
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USBERL 01156 01 OF 05 180517Z

POSTERS IN NOVEMBER 1977, THE BERLIN PROSECUTING ATTORNEY'S OFFICE (STAATSANWALTSCHAFT) CONTACTED USBER LEGAL ADVISER (SURENA) IN ORDER TO ASCERTAIN WHETHER THEY WOULD BE PERMITTED TO PROSECUTE THE PUBLISHERS AND DISTRIBUTORS (ASSUMING THEY COULD BE IDENTIFIED) OF THE ANTI-BREZHNEV POSTER. SURENA REMINDED THE STAATSANWALTSCHAFT THAT WHILE THE LEGAL ADVISERS HAD NOT OBJECTED TO USE OF SECTOR ORDINANCE 501 TO CONFISCATE THE POSTERS, THEY HAD NOT BEEN EAGER TO PERMIT USE OF THIS ORDINANCE IN THE CASE. THE ALLIES HAD NOT INTERPOSED OBJECTIONS, BECAUSE THEY UNDERSTOOD THAT THE FEDERAL GOVERNMENT HAD STRONGLY URGED THE SENAT OFFICIALS TO TAKE SOME ACTION IN THE MATTER. NONETHELESS THE LEGAL ADVISERS HAD MADE CLEAR THAT THEY WOULD NOT CONCUR IN USE OF 501 TO PROSECUTE PUBLISHERS AND DISTRIBUTORS. COMMENT: SECTOR ORDINANCE 501 INVOLVES A RESTRICTION OF FREE SPEECH. LEGAL ADVISERS ARE OPPOSED TO USING 501 AGAINST INDIVIDUALS WHERE A REAL THREAT TO BERLIN SECURITY DOES

CONFIDENTIAL

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CONFIDENTIAL

PAGE 01 USBERL 01156 02 OF 05 180528Z
ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10
L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 ICA-11
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AMEMBASSY BONN
INFO AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION USNATO

C O N F I D E N T I A L SECTION 2 OF 5 USBERLIN 1156

NOT EXIST. END COMMENT.

3. AS A RESULT OF THESE INFORMAL DISCUSSIONS, IT WAS
DEEMED NECESSARY TO HOLD A MEETING. IN LATE JANUARY
1978 SURENA MET WITH GENERAL STAATSANWALT SCHULTZ TO
DISCUSS THE MATTER. SCHULTZ INDICATED THAT THE STAATS-
ANWALTSCHAFT DID NOT RPT NOT REALLY WANT TO PROSECUTE
THESE INDIVIDUALS. HOWEVER, INASMUCH AS THEY HAD
TAKEN THE STEP OF CONFISCATING THE POSTERS, AFTER THEY
HAD SOUGHT AND RECEIVED UNDER ORDINANCE 501 JUDICIAL
WARRANTS TO DO SO, THEY WERE NOW OBLIGED EITHER TO
PROSECUTE THE PUBLISHERS AND DISTRIBUTORS OF THE
POSTERS, OR TO RETURN THE POSTERS. ABSENT A JUDICIAL
HEARING, THE POSTERS COULD NOT BE CONSIDERED ILLEGAL
OR CONTRABAND AND THEREFORE THE STAATSANWALTSCHAFT AND
THE POLICE HAVE NO GROUNDS EITHER TO RETAIN OR TO
DESTROY THE POSTERS. IN ADDITION, THE STAATSANWALTSCHAFT
WAS NOT EAGER TO TAKE THE ISSUE TO TRIAL BECAUSE IT
FEARED THAT THIS WOULD ONLY RESULT IN PROVIDING THE
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USBERL 01156 02 OF 05 180528Z

ORIGINATORS OF THE POSTERS WITH A PUBLIC FORUM IN WHICH
THEY WOULD MORE FULLY EXPOUND THEIR ANTI-SOVIET ARGU-
MENTS. FURTHERMORE, THE STAATSANWALTSCHAFT WAS NOT

AT ALL CONFIDENT THAT A TRIAL WOULD END IN CONVICTION. THEREFORE, NOT ONLY WOULD THE KWB HAVE HAD ITS PUBLIC FORUM, BUT THERE WAS A GOOD CHANCE THAT IT WOULD ALSO HAVE ITS POSTERS BACK AFTER AN ACQUITTAL. BY TAKING THE STEP OF ASKING THE ALLIES WHETHER THEY WOULD PERMIT PROSECUTION, THE STAATSANWALTSCHAFT WAS IN REALITY ASKING TO BE TOLD EXACTLY WHAT THE LEGAL PARAMETERS OF SECTOR ORDINANCE 501 WERE. SURENA RESPONDED THAT THE ALLIED LEGAL ADVISERS WERE OF THE OPINION THAT USE OF SECTOR ORDINANCE 501 SHOULD ONLY BE CONTEMPLATED IN CASES WHERE ONE OF THE OCCUPYING AUTHORITIES IS CRITICIZED, ATTACKED ETC. IN ITS CAPACITY AS AN OCCUPYING AUTHORITY. EVEN THEN IT WOULD NOT BE SENSIBLE TO INVOKE ORDINANCE 501 UNLESS THE SECURITY OF BERLIN WAS THREATENED BY THE ATTACK OR CRITICISM. HOWEVER, THE ULTIMATE DECISION FOR ITS APPLICATION WAS A POLITICAL MATTER. ACCORDINGLY, IN THE CASE OF THE ANTI-BREZHNEV POSTERS IN NOVEMBER 1977 THE ALLIED MISSIONS HAD NOT INTERPOSED ANY OBJECTION TO USING 501 IN THIS MATTER INASMUCH AS THEY UNDERSTOOD THAT THE FEDERAL REPUBLIC HAD STRONGLY REQUESTED THAT THE SENAT DO SOMETHING ABOUT THE POSTERS. THE NOVEMBER DECISION HAD BEEN A POLITICAL DECISION, AND FUTURE DECISIONS ON THIS QUESTION WOULD ULTIMATELY BE POLITICAL AS WELL. SURENA ADDED THAT IT WOULD NOT BE ACCEPTABLE TO RETURN THE POSTERS TO THE KBW. ACCORDINGLY, SCHULTZ AND SURENA AGREED TO THE FOLLOWING SCENARIO:

THE STAATSANWALTSCHAFT WOULD SEND A REPORT TO THE US LEGAL ADVISER (SINCE APPARENTLY POSTERS HAD ONLY BEEN CONFISCATED IN THE US SECTOR). THE POSTERS WHICH WERE SEIZED WOULD BE AN ENCLOSURE TO THIS REPORT. THE REPORT CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USBERL 01156 02 OF 05 180528Z

WOULD STATE THE ACTION THAT THE STAATSANWALTSCHAFT HAD TAKEN, BUT WOULD REQUEST NO ACTION OF THE US AUTHORITIES. THE US AUTHORITIES WOULD NOTE AND OFFER NO RESPONSE TO THE REPORT. IF EITHER THE COURT OR THE KBW ADDRESSED A REQUEST TO THE STAATSANWALTSCHAFT FOR RETURN OF THE POSTERS, THE STAATSANEALTSCHAFT WOULD REFER THE QUESTION TO THE US MISSION, WHICH WOULD NOT RESPOND. THIS WOULD RESOLVE THE INSTANT CASE AND ALLEVIATE THE BURDEN ON THE STAATSANWALTSCHAFT. IT WAS ACKNOWLEDGED THAT THIS WAS A VERY POOR RESULT AND THAT FUTURE CASES, IF ANY, WOULD HAVE TO BE HANDLED IN A MORE SENSIBLE FASHION. COMMENT: THE SCENARIO WAS FOLLOWED AS PLANNED. NEITHER THE COURT NOR THE KBW HAS REQUESTED RETURN OF THE POSTERS. END COMMENT.

3. WE SHOULD NOTE THAT THE NOVEMBER BREZHNEV POSTER CASE PRESENTED IN ONE RESPECT AN IDEAL CASE. THE POSTERS WERE CENTRALLY LOCATED AND HAD NOT YET BEEN DIS-

TRIBUTED. THEREFORE, THE POLICE WERE ABLE TO LOCATE
WHAT AMOUNTED TO A STOREHOUSE OF POSTERS. THE CURRENT
POSTERS ARE ALREADY DISTRIBUTED ABOUT THE CITY. IF
THEY ARE AFFIXED TO PRIVATE OR CITY PROPERTY THEY CAN
BE REMOVED BY POLICE AND PROPERTY OWNERS AS ILLEGAL
POSTINGS. HOWEVER, A CONCERTED ACTION TO

CONFIDENTIAL

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PAGE 01 USBERL 01156 03 OF 05 180538Z
ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10
L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 ICA-11
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C O N F I D E N T I A L SECTION 3 OF 5 USBERLIN 1156

SEIZE SUCH POSTERS AND TO LOCATE THEIR PUBLISHERS AND
DISTRIBUTORS WOULD LIKELY LEAD TO A KEYSTONE COPS
MELODRAME. THE KBW CAN BE EXPECTED TO RELISH THE IDEA
OF SEEING POLICEMEN SCURRYING ABOUT REMOVING POSTERS, OR,
WORSE, GOING AFTER STUDENTS HANDING THEM OUT AROUND TOWN.

4. THUS, IN OUR VIEW, THERE ARE VERY GOOD LEGAL AND
PRACTICAL REASONS WHY WE SHOULD NOT AUTHORIZE USE OF
SECTOR ORDINANCE 501 WITH RESPECT TO SUCH POSTERS. WE
WOULD NOTE THAT IN SUBSEQUENT RESEARCH, WE HAVE DISCOVERED
AN INCIDENT IN 1973 IN WHICH A LEAFLET WAS DISTRIBUTED
DURING A TEMPELHOF OPEN HOUSE. THAT LEAFLET WAS
ENTITLED "OCCUPATION TROOPS GET OUT OF WEST BERLIN AND
THE FRG." SUCH A LEAFLET IS CLEARLY VIOLATIVE OF
SECTOR ORDINANCE 501. THE US AUTHORITIES, HOWEVER, DE-
CIDED TO TAKE NO ACTION. THE INTERNAL MEMORANDUM WHICH
WE HAVE LOCATED IN OUR FILES INDICATES THAT THE BASIS
FOR THIS DECISION WAS THE JUDGEMENT THAT THE DAMAGE

FROM PUBLICUTY WHICH THE PUBLISHERS AND DISTRIBUTORS
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USBERL 01156 03 OF 05 180538Z

WOULD RECEIVE IN COURT PROCEEDINGS WOULD BE GREATER
THAN ANY GAIN IN THE SECURITY OF BERLIN WHICH MIGHT
RESULT FROM A STRICT ENFORCEMENT OF SECTOR ORDINANCE
501 IN THIS CASE. THIS IS IN LINE WITH THE GENERAL
THESIS THAT SECTOR ORDINANCE 501 SHOULD ONLY BE EM-
PLOYED IN THOSE COSES WHERE WE PERCEIVE A POSSIBLE THREAT
TO THE SECURITY OF BERLIN.

5. IN THE NOVEMBER CASE, THE FEDERAL REPUBLIC STRONGLY
URGED THE SENAT TO TAKE ACTION WITH RESPECT TO THE ANTI-
BREZHNEV POSTER. WE BELIEVE THAT THIS REQUEST WAS
MOTIVATED BY A FRG DESIRE TO AVOID ADVERSE PUBLICUTY
IN ANTICIPATION OF THE LONG AWATED BREZHNEV VISIT.
HOWEVER, AFTER THE FACT, THE FEDERAL REPUBLIC REALIZED
THAT WHILE ACTION HAD BEEN TAKEN (UNDER ALLIED LAW) IN
THE WESTERN SECTORS OF BERLIN AGAINST THESE POSTERS,
FRG LAW DID NOT AUTHORIZE ACTION AGAINST SUCH POSTERS
IN THE FEDERAL REPUBLIC. WE ASSUME THAT THE FRG, IN
KEEPING WITH ITS DESIRE FOR RECHTSEINHEIT (LEGAL UNITY)
DECIDED THAT IT DID NOT WISH TO SEE MEASURES TAKEN IN
BERLIN AGAINST THESE POSTERS WHICH COULD NOT BE TAKEN
IN THE FEDERAL REPUBLIC. ACCORDINGLY, WE HAVE RECEIVED
NO REQUEST TO USE ORDINANCE 501 AGAINST THE CURRENT
POSTERS, AND EXPECT THAT BERLIN AUTHORITIES WILL WISH
TO ACT IN ACCORDANCE WITH GERMAN LAW IN FORCE IN BERLIN.

6. AN FRG LAW (WHICH HAS BEEN EXTENDED TO BERLIN)
ON THE SUBJECT DOES EXIST. HOWEVER, FOR IMPLEMENTATION
RECIPROCITY IS NECESSARY. THE SOVIETS HAVE NOT, TO
OUR KNOWLEDGE, MADE THE NECESSARY RECIPROCAL AGREEMENT.
THE LAW IS FOUND IN ARTICLES 103 AND 104A OF THE
CRIMINAL CODE. THEY READ AS FOLLOWS:
BEGIN TEXT - ARTICLE 103 - SECTION 1
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USBERL 01156 03 OF 05 180538Z

WHOEVER INSULTS THE SOVEREIGN OF A FOREIGN
GOVERNMENT OR A MEMBER OF A FOREIGN GOVERNMENT WITH
REFERENCE TO THE INDIVIDUAL'S OFFICIAL FUNCTION, IF THIS
INDIVIDUAL IS IN THE COUNTRY IN HIS OFFICIAL CAPACITY,
OR INSULTS AN OFFICIAL IN THE FEDERAL AREA WHO IS AN ACCREDITED
HEAD OF A FOREIGN OR DIPLOMATIC REPRESENTATION (MISSION)
AHALL BE PUNISHED WITH IMPRISONMENT UP TO THREE

YEARS; IN CASE OF DEFAMATION THE PUNISHMENT IS THREE MONTHS UP TO FIVE YEARS.

ARTICLE 104(A)

OFFENSE AS NAMED IN ARTICLE 103 WILL ONLY BE PROSECUTED, IF THE FEDERAL REPUBLIC ENTERTAINS DIPLOMATIC RELATIONS WITH THE OTHER GOVERNMENT, RECIPROCITY HAS BEEN AGREED UPON (GUARANTEED) AND IS STILL GUARANTEED AT THE TIME OF THE OFFENSE, AND THE FOREIGN GOVERNMENT EXPRESSLY REQUESTS PUNISHMENT WHEN THE FEDERAL GOVERNMENT GIVES AN AUTHORIZATION FOR PROSECUTION. END TEXT.

7. THE COMMENTARY ON ARTICLE 103 STATES:

IF THE PERSON WHO COMMITTED THE INSULT CAN PROVE THAT HIS ALLEGATIONS ARE TRUE THIS EXCLUDES PUNISHMENT AND ARTICLE 193 CRIMINAL CODE READS: "UTTERANCES

CONFIDENTIAL

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CONFIDENTIAL

PAGE 01 USBERL 01156 04 OF 05 180543Z
ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10
L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 ICA-11
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AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
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C O N F I D E N T I A L SECTION 4 OF 5 USBERLIN 1156

MADE IN THE EXERCISE OR IN DEFENSE OF RIGHTS OR FOR THE PRESERVATION OF RIGHTFUL INTERESTS.... ARE PUNISHABLE ONLY INsofar AS THE EXISTENCE OF AN INSULT ARISES FROM THE FORM OF THE ALLEGATION OR FROM THE CIRCUMSTANCES UNDER WHICH IT TOOK PLACE.

8. TO COMPLICATE MATTERS FURTHER, WE UNDERSTAND THAT

DURING BREZHNEV'S VISIT IN THE FRG, BONN AND HAMBURG COURTS ISSUED WARRANTS FOR THE SEIZURE OF ANTI-SOVIET POSTERS. WE UNDERSTAND THE COURTS ACTED UNDER ARTICLES 103 AND 104A. WE (AND THE BERLIN JUSTICE ADMINISTRATION) HAVE BEEN TRYING TO DETERMINE HOW THEY APPLIED ARTICLES 103 AND 104A IN THE ABSENCE OF A RECIPROCAL SOVIET AGREEMENT. SO FAR WE HAVE RECEIVED NO SATISFACTORY ANSWERS. IT APPEARS THAT THE IDEA WAS TO TAKE THE POSTERS OFF THE STREET WHILE BREZHNEV WAS IN TOWN. THEY WILL PROBABLY BE RETURNED TO THEIR OWNERS WHEN IT IS "DISCOVERED" THAT THERE IS NO FRG-SOVIET RECIPROCAL AGREEMENT.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USBERL 01156 04 OF 05 180543Z

9. WE BELIEVE IT IS NECESSARY TO HAVE AT HAND IN BERLIN TALKING POINTS WHEN THE SOVIETS NEXT RAISE THE QUESTION. WE HAVE DRAFTED THE FOLLOWING TALKING POINTS WHICH WE ARE CONVEYING TO THE BRITISH AND FRENCH MISSIONS IN BERLIN, AND WHICH WE ARE TRANSMITTING TO ADDRESSEES AT THIS TIME ONLY FOR INFORMATION. THESE TALKING POINTS REFLECT OUR PERCEPTION THAT IT NECESSARY TO MAKE CLEAR TO THE SOVIETS THAT SHOULD THE SOVIETS WISH ACTION AGAINST SUCH POSTERS, (A) THE ALLIES WILL NOT INTERVENE IN THIS MATTER; (B) THE SOVIETS SHOULD MAKE THE RECIPROCAL AGREEMENT WITH THE FRG; AND (C) TO EXPLAIN THE DIFFERENT RESULT OF NOVEMBER 1977. TALKING POINTS FOLLOW:
BEGIN TEXT - INTRODUCTION.

THE ALLIED AUTHORITIES HAVE EXAMINED YOUR PREVIOUS REQUESTS ON THIS MATTER AND HAVE INSTRUCTED ME TO RESPOND AS FOLLOWS:

1. THE GOVERNMENTS OF FRANCE, THE UNITED KINGDOM AND THE UNITED STATES STRONGLY ADHERE TO THE PRINCIPLE OF THE FREE EXPRESSION OF IDEAS. THIS PRINCIPLE APPLIES TO EXPRESSION IN ALL ITS FORM, INCLUDING THE EXPRESSION OF IDEAS IN PRINTED MATTER. THIS PRINCIPLE AFFORDS INDIVIDUALS OR GROUPS THE RIGHT TO MAKE KNOWN THEIR IDEAS EVEN WHEN THOSE IDEAS ARE CAST IN TERMS OFFENSIVE TO THE DIGNITY OF OTHERS.

2. NO RIGHT, HOWEVER, IS ABSOLUTE. THE EXPRESSION OF VIEWS IN WORDS OR PRINTED MATTER WHICH POSE A CLEAR THREAT OR DANGER TO THE PUBLIC ORDER OR SECURITY OF BERLIN OR TO THE ALLIES THEMSELVES IS NOT PROTECTED BY THE RIGHT OF FREEDOM OF EXPRESSION AND MAY BE PUNISHABLE BY ALLIED LAW IN FORCE IN BERLIN.

3. IN THE ABSENCE OF SUCH A CLEAR THREAT OR DANGER, THE ALLIED AUTHORITIES WILL NOT PROSCRIBE THE EXERCISE OF FREE EXPRESSION OF IDEAS NOR WILL WE AUTHORIZE THE USE
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USBERL 01156 04 OF 05 180543Z

OF ANY ALLIED LEGISLATION TO ACCOMPLISH SUCH A PROSCRIPTION.

4. HOWEVER, YOU SHOULD KNOW THAT GERMAN LAW IN FORCE
IN BERLIN PERMITS THE TAKING OF JUDICIAL ACTION WITH RE-
SPECT TO THE EXPRESSION OF IDEAS WHICH ARE INSULTING OR

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PAGE 01 USBERL 01156 05 OF 05 180550Z
ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10
L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 ICA-11
IO-13 ACDA-12 /091 W
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AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION USNATO

C O N F I D E N T I A L SECTION 5 OF 5 USBERLIN 1156

DEFAMATORY WITH RESPECT TO OFFICIALS OF A FOREIGN GOVERN-
MENT. THAT LEGISLATION IS FOUND IN ARTICLE 103 AND
ARTICLE 104A OF THE GERMAN CRIMINAL CODE. HOWEVER, FOR
IMPLEMENTATION OF THAT LAW WITH RESPECT TO INSULTS AGAINST
THE SOVEREIGN OR OTHER OFFICIALS OF A FOREIGN GOVERNMENT,
IT IS NECESSARY THAT A RECIPROCAL AGREEMENT BE REACHED
BETWEEN THE FOREIGN GOVERNMENT AND THE GOVERNMENT OF THE
FEDERAL REPUBLIC OF GERMANY. WE ARE ADVISED THAT THE
SOVIET UNION HAS NOT UNDERTAKEN SUCH AN AGREEMENT WITH
THE FEDERAL REPUBLIC OF GERMANY. YOU MAY WISH TO ASK

YOUR AUTHORITIES TO DO SO.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USBERL 01156 05 OF 05 180550Z

CONTINGENCY POINTS IF THE SOVIETS ASK FOR AN EXPLANATION OF THE DIFFERENT RESULT IN NOVEMBER 1977:

5. THE CONFISCATION OF THE ANTI-BREZHNEV POSTER IN NOVEMBER 1977 WAS AN ACTION TAKEN UNDER ALLIED LAW IN FORCE IN BERLIN AT THE REQUEST OF THE BERLIN AUTHORITIES. THE BERLIN AUTHORITIES HAVE ADVISED US THAT THEY WILL NOT SEEK TO EMPLOY ALLIED LEGISLATION FOR SUCH ACTIONS IN THE FUTURE. THEY CONCLUDED THAT SUCH LEGISLATION WAS NOT APPROPRIATE TO THE CASE. WE, THE ALLIES, AGREE. FURTHERMORE, FOR REASONS JUST EXPRESSED TO YOU, WE WOULD NOT AUTHORIZED USE OF ALLIED LEGISLATION IN SUCH CASES IN THE FUTURE.

IF PRESSED FOR FURTHER EXPLANATION

6. THE ALLIED LEGISLATION RELIED UPON BY THE BERLIN AUTHORITIES TO CONFISCATE THE BREZHNEV POSTERS IN NOVEMBER 1977 WAS SECTOR ORDINANCE 501. UPON REVIEW WE HAVE CONCLUDED THAT IT APPLIES ONLY IN CASES WHERE ONE OR MORE OF THE OCCUPYING POWERS IN BERLIN IS ATTACKED, CRITICIZED, ETC. IN ITS CAPACITY AS AN OCCUPYING POWER. FURTHERMORE, WE CONSIDER THAT EVEN IN SUCH CASES, THE ORDINANCE SHOULD NOT BE INVOKED UNLESS THE OFFENSIVE EXPRESSION CONSTITUTES A CLEAR THREAT OR DANGER TO THE PUBLIC ORDER OR SECURITY OF BERLIN.

7. WE WOULD NOTE FURTHER THAT AS A PRACTICAL MATTER IT IS DIFFICULT TO GIVE FULL EFFECT TO THE ORDINANCE IN THE ABSENCE OF SWEEPING MEASURES WHICH THE ALLIES DO NOT WISH TO UNDERTAKE. FOR EXAMPLE, IN THE WESTERN SECTORS OF BERLIN A NUMBER OF PUBLICATIONS, SUCH AS NEUES DEUTSCHLAND, CIRCULATE WHICH FROM TIME-TO-TIME CRITICIZE THE ALLIES FOR THEIR EXERCISE OF RIGHTS AND RESPONSIBILITIES IN GREATER BERLIN. SURELY, YOU WOULD

CONFIDENTIAL

PAGE 03 USBERL 01156 05 OF 05 180550Z

AGREE THAT IT WOULD NOT BE FEASIBLE FOR US TO SEEK TO CONFISCATE ALL COPIES OF THE OFFENSIVE PUBLICATION AND TO PROSECUTE THE PUBLISHERS. BOTH BECAUSE WE STRONGLY SUPPORT THE EXERCISE OF FREE SPEECH AND BECAUSE WE CONSIDER THAT THE NEUES DEUTSCHLAND AND OTHER ASSERTIONS DO NOT ENDANGER THE SECURITY OF BERLIN, WE DO NOT AUTHORIZE ACTION UNDER ALLIED LAW. END TEXT.

10. WE BELIEVE THERE IS VIRTUE IN BEING EXPRESS, AND MAKING CLEAR THAT WE WILL NOT IN THE FUTURE USE THIS ORDINANCE WITH RESPECT TO THE KINDS OF POSTERS THE SOVIETS ARE COMPLAINING ABOUT. WE DO NOT CONSIDER THAT THIS APPROACH RESTRICTS OUR OPTIONS, BECAUSE WE DO NOT CONSIDER ACTION AGAINST SUCH POSTERS TO BE A FEASIBLE OPTION. HOWEVER, ASSUMING THE SOVIETS WISH TO REACH THE RECIPROCAL AGREEMENT, WE WOULD HAVE NO OBJECTION TO THE BERLIN AUTHORITIES, ON THE BASIS OF GERMAN LAW IN FORCE IN BERLIN, CHASING DOWN THE MALEFACTORS AND THE PRODUCT OF THEIR LABORS. ABSENT SUCH A DEVELOPMENT, THE BERLIN POLICE CAN OF COURSE CONTINUE TO TAKE DOWN POSTERS AND WHITEWASH DEFAMATORY GRAFFITI ON THE GROUNDS THAT THE OWNER OF THE SPACE IN QUESTION HAD NOT GIVEN PERMISSION FOR ITS USE. HOWEVER, THIS EXPEDIENT WILL NOT WORK IN THE CASE OF LEAFLETS BEING HANDED OUT AROUND TOWN. GEORGE

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